

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

NINA COLBERT, on behalf of  
JVR, a minor,

Plaintiff,

v.

Case No. 13-13801  
Hon. Denise Page Hood

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**ORDER ACCEPTING REPORT AND RECOMMENDATION  
and  
DISMISSING ACTION**

This matter is before the Court on Magistrate Judge Michael J. Hluchaniuk's Report and Recommendation. **[Doc. No. 15, filed July 8, 2014]** To date, no objections have been filed to the Report and Recommendation and the time to file such has passed.

Judicial review of the Commissioner's decision is limited in scope to determining whether the Commissioner employed the proper legal criteria in reaching his conclusion. *Garner v. Heckler*, 745 F.2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F.2d 922, 928 (6th Cir. 1987). A district court's review of an ALJ's decision is not a *de novo* review. The district court may not resolve

conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F.2d at 397. The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support a contrary decision or if the district court arrives at a different conclusion. *Smith v. Secretary of HHS*, 893 F.2d 106, 108 (6th Cir. 1984); *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusions for the proper reasons. In this case, Plaintiff does not challenge the ALJ's conclusion that the minor's impairment, asthma, did not meet the Listings. Plaintiff's appeal focuses on the ALJ's assessment that the minor's asthma did not meet a serious or marked limitation as to the domain of health and physical well-being. The Court agrees with the Magistrate Judge that the ALJ's conclusion was supported by the record that the minor's asthma symptoms did not meet the criteria for an extreme limitation in the domain of the minor's health and physical well-being. The record supports the ALJ's findings that the minor's asthma is well-controlled and that there are no rales or rhonchi generally noted, with only periodic instances of wheezing. Plaintiff's claim that the minor required four to six hours of treatment daily is not supported by the record. The ALJ properly gave weight to the testimony of the medical expert, Ashir Kumar, M.D., who testified at the hearing after examining the medical record and hearing the testimony of Plaintiff and the

minor. Dr. Kumar found less than marked limitations in the domain of health and physical well-being, the domain at issue on appeal.

The Magistrate Judge reviewed the ALJ's findings and the record in reaching his conclusion that the minor had less than marked limitation in the domain of health and physical well-being. The Court accepts the Magistrate Judge's Report and Recommendation as this Court's findings of fact and conclusions of law.

For the reasons set forth above,

**IT IS ORDERED** that the Report and Recommendation of Magistrate Judge Michael Hluchaniuk [Doc. No. 15, filed July 8, 2014] is **ACCEPTED** and **ADOPTED** as this Court's findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment [Doc. No. 10, filed January 29, 2014] is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant's Motion for Summary Judgment [Doc. No. 12, filed March 28, 2014] is **GRANTED**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** with prejudice.

Dated: July 31, 2014

S/Denise Page Hood  
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Denise Page Hood  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 31, 2014, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager